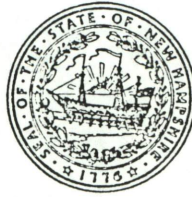


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THE STATE OF NEW HAMPSHIRE

83-116-I



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October 3, 1983

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Leslie P. Mason, Jr.
Personnel Adjutant to
The Adjutant General
State Military Reservation
1 Airport Road
Concord, NH 03301

Dear Mr. Mason:

By letter dated September 7, 1983, you have requested our opinion on whether War Bonus files compiled by the Adjutant General's Office constitute public records. We have interpreted your letter as a request that we provide our opinion on whether such files are subject to RSA 91-A:4, which permits inspection by the public of those public records not otherwise exempted by RSA 91-A:5. Our response is that those files are not subject to RSA 91-A:4, and therefore need not be made available for inspection by the public.

Although RSA 91-A, commonly referred to as the Right to Know Law, provides no definition of public record,¹ the

¹ Although not controlling, we would note that RSA 8-B:7, II defines a state record as:

- (1) A record of a department, office, commission, board of other agency, however designated, of the state government, or
- (2) A record of the state legislature, or
- (3) A record of any court of record, whether of statewide or local jurisdiction, or
- (4) Any other record designated or treated as a state record under state law.



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Supreme Court has stated that the scope and application of the statute are to be broadly construed. Thayer v. State Tax Commission, 113 N.H. 533 (1973). Because the War Bonus files have been compiled by the Adjutant General's Office, and have been utilized in determining eligibility for State Veterans' Bonuses, it is our opinion that these files are public records. For the following reasons, however, we believe that these records are not subject to the public disclosure requirements of RSA 91-A:4.

While the purpose of RSA 91-A, is to "ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people," the Legislature has specifically recognized that certain records should not be made available for public inspection. The following records have been specifically exempted from the disclosure requirements imposed by RSA 91-A:4:

- I. Grand and petit juries.
- II. Parole and pardon boards.
- III. Personal school records of pupils.
- IV. Records pertaining to internal personnel practices, confidential, commercial, or financial information, personnel, medical, welfare, and other files whose disclosure would constitute invasion of privacy.

To determine whether the War Bonus files are exempted under RSA 91-A:5, the benefits of disclosure to the public must be weighed against the benefit of nondisclosure to the public body. Mans v. Lebanon School Board, 112 N.H. 160 (1972).

According to your letter, the War Bonus files contain records of service of individuals in the armed forces, including "federal discharge/separation documents." Not only do these records pertain to the internal personnel practices of the armed services, but they also contain personal information protected under the Federal Privacy Act of 1975. 5 U.S.C. §552a. Given the sensitive nature of the documents contained in these files and the constraints imposed by federal law, the War Bonus records maintained by the Adjutant General's Office should not be made available for public inspection.

I trust this is responsive to your inquiry. Should you have any additional questions, please feel free to contact me.

Very truly yours,

Loretta S. Platt

Loretta S. Platt
Assistant Attorney General
Division of Legal Counsel